

Wage and Hour Division, Labor

§ 531.4

the Act, including the term “tipped employee” as defined in section 3(t).

Subpart B—Determinations of “Reasonable Cost” and “Fair Value”; Effects of Collective Bargaining Agreements

§ 531.3 General determinations of “reasonable cost.”

(a) The term *reasonable cost* as used in section 3(m) of the Act is hereby determined to be not more than the actual cost to the employer of the board, lodging, or other facilities customarily furnished by him to his employees.

(b) *Reasonable cost* does not include a profit to the employer or to any affiliated person.

(c) Except whenever any determination made under § 531.4 is applicable, the “reasonable cost” to the employer of furnishing the employee with board, lodging, or other facilities (including housing) is the cost of operation and maintenance including adequate depreciation plus a reasonable allowance (not more than 5½ percent) for interest on the depreciated amount of capital invested by the employer: *Provided*, That if the total so computed is more than the fair rental value (or the fair price of the commodities or facilities offered for sale), the fair rental value (or the fair price of the commodities or facilities offered for sale) shall be the reasonable cost. The cost of operation and maintenance, the rate of depreciation, and the depreciated amount of capital invested by the employer shall be those arrived at under good accounting practices. As used in this paragraph, the term “good accounting practices” does not include accounting practices which have been rejected by the Internal Revenue Service for tax purposes, and the term “depreciation” includes obsolescence.

(d)(1) The cost of furnishing “facilities” found by the Administrator to be primarily for the benefit or convenience of the employer will not be recognized as reasonable and may not therefore be included in computing wages.

(2) The following is a list of facilities found by the Administrator to be primarily for the benefit of convenience of the employer. The list is intended to be illustrative rather than exclusive: (i)

Tools of the trade and other materials and services incidental to carrying on the employer’s business; (ii) the cost of any construction by and for the employer; (iii) the cost of uniforms and of their laundering, where the nature of the business requires the employee to wear a uniform.

§ 531.4 Making determinations of “reasonable cost.”

(a) *Procedure*. Upon his own motion or upon the petition of any interested person, the Administrator may determine generally or particularly the “reasonable cost” to an employer of furnishing any employee with board, lodging, or other facilities, if such board, lodging, or other facilities are customarily furnished by the employer to his employees. Notice of proposed determination shall be published in the FEDERAL REGISTER, and interested persons shall be afforded an opportunity to participate through submission of written data, views, or arguments. Such notice shall indicate whether or not an opportunity will be afforded to make oral presentations. Whenever the latter opportunity is afforded, the notice shall specify the time and place of any hearing and the rules governing such proceedings. Consideration shall be given to all relevant matter presented in the adoption of any rule.

(b) *Contents of petitions submitted by interested persons*. Any petition by an employee or an authorized representative of employees, an employer or group of employers, or other interested persons for a determination of “reasonable cost” shall include the following information:

(1) The name and location of the employer’s or employers’ place or places of business;

(2) A detailed description of the board, lodging, or other facilities furnished by the employer or employers, whether or not these facilities are customarily furnished by the employer or employers, and whether or not they are alleged to constitute “wages”;

(3) The charges or deductions made for the facility or facilities by the employer or employers;

(4) When the actual cost of the facility or facilities is known an itemized statement of such cost to the employer

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or employers of the furnished facility or facilities;

(5) The cash wages paid;

(6) The reason or reasons for which the determination is requested, including any reason or reasons why the determinations in § 531.3 should not apply; and

(7) Whether an opportunity to make an oral presentation is requested; and if it is requested, the inclusion of a summary of any expected presentation.

§ 531.5 Making determinations of “fair value.”

(a) *Procedure.* The procedures governing the making of determinations of the “fair value” of board, lodging, or other facilities for defined classes of employees and in defined areas under section 3(m) of the Act shall be the same as that prescribed in § 531.4 with respect to determinations of “reasonable cost.”

(b) *Petitions of interested persons.* Any petition by an employee or an authorized representative of employees, an employer or group of employers, or other interested persons for a determination of “fair value” under section 3(m) of the Act shall contain the information required under paragraph (b) of § 531.4, and in addition, to the extent possible, the following:

(1) A proposed definition of the class or classes of employees involved;

(2) A proposed definition of the area to which any requested determination would apply;

(3) Any measure of “fair value” of the furnished facilities which may be appropriate in addition to the cost of such facilities.

§ 531.6 Effects of collective bargaining agreements.

(a) The cost of board, lodging, or other facilities shall not be included as part of the wage paid to any employee to the extent it is excluded therefrom under the terms of a bona fide collective bargaining agreement applicable to the particular employee.

(b) A collective bargaining agreement shall be deemed to be “bona fide” when it is made with a labor organization which has been certified pursuant to the provision of section 7(b)(1) or 7(b)(2) of the Act by the National Labor

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Relations Board, or which is the certified representative of the employees under the provisions of the National Labor Relations Act, as amended, or the Railway Labor Act, as amended.

(c) Collective bargaining agreements made with representatives who have not been so certified will be ruled on individually upon submission to the Administrator.

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Subpart C—Interpretations

§ 531.25 Introductory statement.

(a) The ultimate decisions on interpretations of the Act are made by the courts (*Mitchell v. Zachry*, 362 U.S. 310; *Kirschbaum v. Walling*, 316 U.S. 517). Court decisions supporting interpretations contained in this subpart are cited where it is believed they may be helpful. On matters which have not been determined by the courts, it is necessary for the Secretary of Labor and the Administrator to reach conclusions as to the meaning and the application of provisions of the law in order to carry out their responsibilities of administration and enforcement (*Skidmore v. Swift*, 323 U.S. 134). In order that these positions may be made known to persons who may be affected by them, official interpretations are issued by the Administrator on the advice of the Solicitor of Labor, as authorized by the Secretary (Reorganization Plan 6 of 1950, 64 Stat. 1263; Gen. Order 45A, May 24, 1950, 15 FR 3290). The Supreme Court has recognized that such interpretations of this Act “provide a practical guide to employers and employees as to how the office representing the public interest in its enforcement will seek to apply it” and “constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance.” Further, as stated by the Court: “Good administration of the Act and good judicial administration alike require that the standards of public enforcement and those for determining private rights shall be at variance only where justified by very good reasons.” (*Skidmore v. Swift*, 323 U.S. 134.)

(b) The interpretations of the law contained in this subpart are official